



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 140220164-4164-01]

RIN 0648-BE00

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Groundfish Fishery; Fishing Year 2014; Recreational Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: This action changes the Gulf of Maine Atlantic cod and haddock recreational fishery minimum fish size requirements, per-angler possession limits, and fishing seasons for the 2014 fishing year (May 1, 2014-April 30, 2015). This action is necessary to ensure that recreational catch does not exceed recreational catch limits for these two stocks for the 2014 fishing year, consistent with the Northeast Multispecies Fishery Management Plan accountability measures. The intended effect of the changes is to ensure effective management so recreational catch limits are not exceeded as part of the larger Northeast multispecies catch limit and accountability measures management system designed to prevent overfishing.

DATES: Effective May 1, 2014. Comments must be received by [insert date 30 days from date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2014-0044, by any of the following methods:

- Electronic submissions: Submit all electronic public comments via the Federal eRulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0044](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0044), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on the FY 2014 Cod and Haddock Recreational Measures.”

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Copies of a supplemental environmental assessment (EA) to Framework (FW) 51 prepared by the Greater Atlantic Regional Fisheries Office (GARFO) and Northeast Fisheries Science Center (Center) and the FW 51 EA prepared by the New England Fishery Management Council (Council) for this rulemaking are available from John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. The FW 51 EA and supplement are also accessible via the Internet at [www.nero.noaa.gov/sfd/sfdmulti.html](http://www.nero.noaa.gov/sfd/sfdmulti.html).

FOR FURTHER INFORMATION CONTACT: Michael Ruccio, Fishery Policy Analyst, phone: 978-281-9104.

## SUPPLEMENTARY INFORMATION:

### Fishing Year (FY) 2014 Recreational Management Measures

After consultation with the Council, NMFS is implementing through this rule measures to ensure FY 2014 Gulf of Maine (GOM) cod and haddock recreational catch do not exceed the recreational sub-annual catch limits (sub-ACLs) for these stocks. These measures are specified in Table 1 with information on FY 2013 measures for comparison.

Table 1. GOM Cod and Haddock Recreational Management Measures for FY 2014 and Changes from FY 2013 Measures.

Species	FY 2014 Measures			FY 2013 Measures		
	Per Day Possession Limit (fish per angler)	Minimum Fish Size, Inches (cm)	Possession Prohibited (GOM Area)	Per Day Possession limit	Minimum Fish Size, Inches (cm)	Possession Prohibited (GOM Area)
Cod	9	21 (53.34)	September 1, 2014 - April 14, 2015	9	19 (48.26 mm)	November 1- April 15
Haddock	3	21 (53.34)	September 1 – November 30, 2014 and March 1 – April 30, 2015	unlimited	21 (53.34)	None

The description for how days are counted for daily possession limits is found at §648.89(c)(4).

The measures NMFS is implementing for FY 2014 are projected to have a 50-percent or greater probability of achieving a total mortality estimate of 422 mt for recreational GOM cod (64 mt less than the sub-ACL) and 80 mt of haddock (7 mt lower than the sub-ACL). The provisions requiring these measures can be found in § 648.89(f)(2) of the Northeast Multispecies Fishery Management Plan (FMP) implementing regulations.

### Background

More substantial background on this action, including details on Recreational Advisory Panel (RAP) and Council-recommended measures and the resulting projected catch in FY 2014 associated with those options, can be found in the supplemental EA prepared for this action.

Additional information regarding the presentations and discussions held by the RAP and Council are available on the Council's web site: <http://www.nefmc.org/>. The supplemental EA is available

as outlined in the ADDRESSESS section of this rule’s preamble. NMFS is concurrently developing a proposed rule with the Council’s catch recommendations, including recreational catch limits, and other FY 2014 management measures contained in Framework Adjustment (FW 51) to the FMP for May 1, 2014, implementation. The proposed and final rules for FW 51(when published), along with supporting analyses for FW 51 can be found at the Federal electronic rulemaking portal:

Regulations.gov. Reference docket NOAA-NMFS-2014-0003.

[www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0003](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0003). The following is a brief background overview.

Based on measures implemented pursuant to Framework Adjustment 48 to the FMP, when the current fishing year recreational GOM cod and haddock catch is projected to exceed the established recreational sub-ACLs, NMFS must, after consultation with the Council, adjust the recreational management measures through rulemaking for the upcoming season to ensure that catch limits are not exceeded. Recreational management measures generally include a combination of the minimum fish size anglers may keep, the number of fish anglers may keep (possession limit), and the seasons when fishing is allowed.

The GOM cod and haddock recreational catch estimates indicate the estimated FY 2013 GOM cod catch is 706 mt and 256 mt for GOM haddock.<sup>1</sup> These catch estimates significantly exceed the fishing year FY 2013 sub-ACLs, which is 486 mt for GOM cod and is 74 mt for GOM

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<sup>1</sup> Marine Recreational Information Program (MRIP) data through May 1-December 31, 2013, with projected landings for the rest of the fishing year based on prior year catch in March-April 2013 (referred to as Wave 2; under MRIP, a calendar year is divided into six 2-two month “Waves”). Note the projection for calendar year 2014 does not include January and February. Wave 1(January-February) is not sampled even though the haddock fishery is open. Effort and catch is believed to be minimal during this time period.

haddock. For FY 2014, the Council has recommended a recreational 486-mt sub-ACL for GOM cod and an 87-mt recreational sub-ACL for GOM haddock. As specified in Table 2, in order not to exceed the recommended sub-ACLs in FY 2014, recreational GOM cod catch must be reduced from actual 2013 catch estimates by 31 percent for GOM cod and 66 percent for GOM haddock.

Table 2. FY 2013 and 2014 Recreational GOM Cod and Haddock Catch, Catch Limits, and Catch Reduction Information, in Metric Tons (mt).

GOM Stock	FY 2013 sub-ACL	Estimated Total Catch	Percent of FY 2013 sub-ACL Caught	Council-recommended FY 2014 sub-ACL	Percent reduction in landings needed for FY 2014
Cod	486	706	145	486	31
Haddock	74	256	246	87	66

Total catch = MRIP data through Wave 6 (December 31, 2013) and projected Wave 2 (April-May, 2014) data.

On February 19, 2014, NMFS Office of Science and Technology revised MRIP data from 2003-present to correct an error found in the data processing of length-weight information. This revision did not change effort and catch in numbers of fish but did impact all length-weight related estimates. Analyses conducted by staff from NMFS Northeast Fisheries Science Center indicate that the data revisions did not significantly change the previous catch projections for FY 2013 or the analysis of potential FY 2014 measures. Additional evaluation of potential impacts throughout the time series is ongoing.

Because annual year-to-year recreational management measures are considered to be a temporary specification under the FMP, they are not codified in the Code of Federal Regulations. Instead, rules like this one are promulgated and announced in the Federal Register and further communicated to the public in letters to Federal permit holders, published on-line/website notices, and multiple information outlets such as social media, notices to states and recreational fishing associations, etc. Violation of specifications, such as these recreational management measures, is prohibited under § 648.14(a)(1).

As part of the consultation process required to implement these measures, the Council convened the RAP on February 19, 2014, to recommend management measure changes for the Council's consideration. The RAP recommendation and additional alternatives were discussed by the Council at its February 25, 2014, meeting. The Council recommended that NMFS consider the RAP and additional recommendations from the Council. The Council also requested additional analyses to evaluate the potential catch reduction that would result from changes to the cod and haddock possession limits.

None of the alternatives recommended by the RAP or the Council provide at least a 50-percent probability (i.e., 50/50) of preventing FY 2014 recreational sub-ACLs for these two stocks from being exceeded based on FY 2013 catch. To determine what measures are necessary to have at least a 50-percent probability of preventing these sub-ACLs from being exceeded, NMFS analyzed additional options for FY 2014 measures as more fully discussed in the Supplemental EA. Based on this additional analysis, NMFS derived the measures specified in Table 1.

NMFS is aware that the reduction in haddock possession limit is a substantial change in the fishery and was only discussed as a management concept during the RAP and Council meetings. NMFS sought to find measures that made use of as much of the Council's recommendations as possible and that were consistent with the non-binding prioritization in the proactive accountability measures language (§ 648.89(f)(3)), while mitigating impacts on the recreational fishery to the extent practicable. For example, the FY 2014 measures retain the 21-inch (53.34-cm) minimum fish size and Wave 5 (September-October 2014) closure recommended by the Council and supported in public comments during the Council proceedings. The measures also make use of a reduced haddock bag limit which is consistent with one of the Council's recommendations. The addition of a Wave 2 (March-April 2015) closure provides a median probability catch below the FY 2014 haddock recreational sub-ACL.

A benchmark stock assessment for GOM haddock is planned for June 2014. The results from this assessment should be available by late summer. NMFS will consider the results when available along with public comment on these interim measures and take appropriate action if warranted. While the outcome of the assessment cannot be predicted, part of the rationale for including a spring closure for haddock as opposed to an earlier closure is the possibility that the measures may be changed before the closure occurs.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a determination that this interim rule is consistent with the Northeast Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

Pursuant to 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries finds good cause to waive the otherwise applicable requirements for both notice and comment rulemaking and a 30-day delay in effectiveness for this interim final action implementing FY 2014 recreational GOM cod and haddock management measures. As explained in further detail hereafter, the availability of information necessary to ensure that measures were in place for the May 1, 2014, start of the fishing year made it impracticable to provide prior notice-and-comment opportunity and a 30-day delay in effectiveness and still get the measures in place in a timely fashion. The measures being implemented by this interim final rule are substantial reductions from those in place for FY 2013. Fishing effort and catch are both strong in May and subsequent summer months. Delaying implementation of FY 2014 measures until sometime after May 1, 2014, could require the implementation of even more stringent measures with possibly more social and economic impacts to fishery participants to ensure limits on total catch for the year are not exceeded. Doing so would be contrary to the public interest and would undermine the intent of the

rule. Development of measures was publicly discussed at a RAP and Council meeting in February 2014 and NMFS is soliciting public comment on the interim measures contained in this rule.

Recreational fisheries data are available from NMFS's MRIP survey program approximately 45 days after each 2-month sampling wave. The necessary information to evaluate FY 2013 fishery performance through October 2013 was not available until mid-December 2013. An initial evaluation of these data occurred shortly thereafter and NMFS notified the Council by letter on January 17, 2014, that the FY 2013 recreational sub-ACLs for both GOM cod and haddock had been exceeded and that NMFS intended to adjust FY 2014 measures in accordance with requirements in regulations for implementing accountability measures to address the overage. These requirements require that NMFS consult with the Council before setting new ACLs. As part of this consultation process for FY 2014, the Council had to convene its RAP and consider possible recommendations for NMFS. The earliest that the Council could consider these recommendations was at its February 25, 2014, meeting. The Council, in turn, forwarded recommendations to NMFS to consider as measures for FY 2014 that begins on May 1, 2014.

These timing-related issues paired with the need to complete analyses and the rulemaking processes make it impossible to propose recreational measures through notice-and-comment rulemaking before the start of the fishing year, May 1, 2014. By implementing these measures through an interim final rule, NMFS can provide some advance notice to the public, though less than 30 days, and receive comments on the interim final rule. These comments will be considered and any necessary changes to measures put forward in a final rule later in the fishing year.

For the reasons outlined, NMFS finds it impracticable and contrary to the public interest to provide prior opportunity to comment on FY 2014 recreational management measures and provide a 30-day delay in implementation. Therefore there exists good cause to waive both of those requirements.



This final rule has been determined to be not significant for purposes of Executive Order 12866.

This interim final rule does not contain policies with Federalism or “takings” implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

This interim final rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

Dated: April 17, 2014

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Paul N. Doremus,  
Deputy Assistant Administrator for Operations,  
National Marine Fisheries Service.

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